

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PATRICIA K. WALLER and
WILLIAM A. WALLER

Plaintiffs

v.

BLACK HAWK SHIPPING ENTERPRISES INC.
BLACK HAWK SHIPPING CO. INC.,
COMPASS ROSE COMPANY LIMITED, and XYZ
INSURANCE COMPANIES., in personam,
and the vessel
M/V MEGOLLY HAWK, her engines,
tackle, gear, appurtenance etc. *in rem*

Defendants

CIVIL NO.

Demand for Jury Trial

COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs, Patricia K. Waller and William A. Waller, by their attorneys, José F. Sárraga and Tabak, Mellusi & Shisha LLP, allege upon present information and belief:

1. Jurisdiction is predicated pursuant to 28 USC Section 1332, diversity of citizenship, the amount in controversy exceeds SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS exclusive of costs and interests; and in the alternative, jurisdiction is based on 28 USC § 1333, Admiralty and General Maritime Law.

2. Plaintiffs are citizens of the State of New Jersey.

3. None of the defendants are business entities organized under the laws of the State of New Jersey, none are citizens of the State of New Jersey and do not have their principle place of business or are doing business in the State of New Jersey.

4. The venue exist by reason of the fact that defendants do business within the jurisdiction of this court and the vessel M/V MEGOLLY HAWK continuously operates on liner service from the port of San Juan, P.R.

5. At all times relevant, defendant BLACK HAWK SHIPPING ENTERPRISES INC. owned, operated, managed and controlled a certain vessel known as the M/V MEGOLLY HAWK and employed the seamen and crewmembers of the vessel MV MEGOLLY HAWK.

6. At all times relevant, defendant BLACK HAWK SHIPPING COMPANY INC. owned, operated, managed and controlled a certain vessel known as the M/V MEGOLLY HAWK and employed the seamen and crewmembers of the vessel MV MEGOLLY HAWK.

7. At all times relevant, defendant COMPASS ROSE COMPANY LIMITED, owned, operated, managed and controlled a certain vessel known as the M/V MEGOLLY HAWK and employed the seamen and crewmembers of the vessel MV MEGOLLY HAWK.

8. The defendant vessel M/V MEGOLLAY HAWK is a merchant cargo vessel, built in 1964, her official CG number is 295337, and her call sign is V2YB7.

9. At all times relevant, defendants XYZ INSURANCE COMPANIES, true name unknown, are one or more insurance

companies, whose identities or places of incorporation are unknown at this time but believed to be in a foreign country, which had in effect for all times relevant to this Complaint, one or more policies of insurance covering the risks and damages claimed herein, to the benefit of the *in personam* defendants COMPASS ROSE COMPANY LIMITED, BLACK HAWK SHIPPING ENTERPRISES INC., and/or BLACK HAWK SHIPPING COMPANY INC., and/or for the defendant vessel known as the **M/V** MEGOLLY HAWK, *in rem*.

10. On the late afternoon of May 21, 2007 the vessel M/V MEGOLLY HAWK was navigating in Gallows Bay in Christiansted Harbor, U.S. Virgin Islands.

11. At approximately 17:20 hrs. the vessel M/V MEGOLLYHAWK collided with the sail vessel DAYDREAMER in Christiansted Harbor, U.S.V.I.

12. At the time of collision, the sail vessel DAYDREAMER was carrying passengers for hire which included the plaintiffs.

13. Plaintiffs claim the defendants were negligent in the operation and navigation of their vessel in failing to follow the navigational rules of the road, in failing to follow proper standards of navigational seamanship, in failing to take reasonable and proper precautions for the safety of persons aboard the sail vessel DAYDREAMER including the plaintiffs, in failing to take proper precautions once the collision had occurred and in other particulars to be presented at trial.

14. As a result of the aforesaid collision, the plaintiffs were tossed violently about the vessel, and the mast

of the sail vessel DAYDREAMER collapsed striking the Plaintiff Patricia K. Waller.

15. Plaintiff Patricia K. Waller required immediate transport to the *Governor Juan F. Luis Hospital* for emergency medical attention which treatment continued following her return home to New Jersey.

16. As a result Plaintiff Patricia K. Waller suffered serious and permanent personal injuries and economic damages in the amount of **one million dollars**.

For a Second Cause of Action

17. Plaintiffs repeat and reallege all of the foregoing paragraphs 1 to 16, inclusive, with the same force and effect as though set forth again in length.

18. Plaintiff William A. Waller at all relevant times was the lawful and loving husband of Patricia K. Waller.

19. As a result of the injuries sustained to Patricia K. Waller, the husband and wife relationship between the plaintiffs was injured, resulting in loss of society, services and consortium all to his damage in the amount of **Seven hundred fifty thousand dollars**.

For a Third Cause of Action for Punitive Damages

20. Plaintiffs restate and reallege each and every allegation contained paragraphs 1 to 19, inclusive, with the

same force and effect as though set forth again in length.

21. Defendants conduct, actions and omissions in causing the collision constituted willful, wanton, and reckless conduct for which punitive damages are sought in the amount of **one million dollars**.

For a Fourth Cause of Action In Rem against the defendant vessel M/V MEGOLLY HAWK

22. Plaintiffs restate and reallege each and every allegation contained in paragraphs 1 to 21, inclusive, with the same force and effect as though set forth again in length.

23. The defendant vessel M/V MEGOLLY HAWK is presently located in or will be located in this District during the pendency of this suit, and is or will be subject to the jurisdiction of this Honorable Court.

24. By reason of the aforesaid, plaintiffs have a maritime lien against said vessel for all compensatory and punitive damages awarded to plaintiffs.

25. Plaintiffs request trial by jury.

WHEREFORE, Plaintiffs Patricia K. Waller and William A. Waller pray:

A) That judgment be entered against all named defendants BLACK HAWK SHIPPING ENTERPRISES INC., BLACK HAWK SHIPPING CO. INC., COMPASS ROSE COMPANY LIMITED, and all XYZ INSURANCE COMPANIES, true names presently unknown, sued *in personam*, jointly and severally in the amount of two million seven hundred fifty thousand dollars.

B) That judgment be entered against the defendant vessel M/V MEGOLLY HAWK, *in rem*, that process in due form of law, according to the *Federal Rules of Civil Procedure* and *Supplemental Rules for Certain Admiralty and Maritime Claims*, issue against said vessel her engines, tackle, apparel, etc., *in rem*; citing all persons having or claiming any interest therein to appear and answer all and singular, the matters aforesaid;

C) That plaintiffs' lien be declared a valid maritime lien upon the whole of the vessel, her engines, apparel, appurtenances, tackles, etc., *in rem*; that after due proceedings be had, there be judgment in favor of plaintiffs, and against the defendant vessel M/V MEGOLLY HAWK, her engines, tackle, apparel, appurtenances, etc.; *in rem*, for an amount proved, together with interest, costs, attorneys' fees and other damages as may be shown at trial;

D) That the defendant vessel M/V MEGOLLY HAWK be condemned and sold free and clear of all liens and encumbrances to satisfy the judgment herein, and that Plaintiffs' maritime lien be recognized, enforced and paid by preference and priority over any other claimants and/or interveners herein.

E) That plaintiffs be awarded costs, prejudgment and post judgment interest, and such other and further relief as justice may require.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th day of May, 2010.

S/José F. Sárraga, Esq.

JOSE F. SARRAGA
Attorney for Plaintiffs
USDC-P.R. #118913
PO Box 9023962
San Juan, PR 00902-3962
Tel: (787) 723-0505
Fax: (787) 724-5305
Email: josarlaw@icepr.com

Ralph J. Mellusi, Esq.

TABAK, MELLUSI & SHISHA LLP
Attorney for Plaintiffs
29 Broadway, Room 2311
New York, N.Y. 10006-3212
Tel. (212)962-7590
Fax. (212)385-0920
Email: rjmellusi@sealawyers.com